

A “retailer maintaining a place of business in Illinois” as described in 86 Ill. Adm. Code 150.201(i), is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801. (This is a GIL).

May 16, 2000

Dear Xxxxx:

This letter is in response to your letter received April 11, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department’s website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

One of our clients has asked us to seek advice from the Illinois Department of Revenue concerning the sales tax consequences of exhibiting at trade shows.

The client is a manufacturer located in STATE with no offices or sales representatives in Illinois. It sells its product throughout the United States by catalog, by mail and by telephone. The vendor does not have nexus with Illinois for sales tax purposes.

From time to time the client participates in trade shows in various parts of the country. At these trade shows, the client exhibits its product and answers questions from interested potential customers, but it does not take any orders or make any sales at the show. Both before and after the trade show, the vendor may make interstate sales to customers in that state by telephone and by mail.

The purpose of this letter is to seek your advice as to whether the mere participation and exhibition at a trade show in Illinois, in the circumstances described, would be sufficient to create nexus, so as to render subsequent sales to customers in Illinois subject to your state’s sales tax.

We have spoken with a representative of your office, who referred us to Ill. Adm. Code Sec. 150.801. That regulation states in part: “Every retailer maintaining a place of business in [Illinois] must act as a Use Tax collector for this State. ... Out-of-state retailers who have ... any kind of order-soliciting or order-taking representative either stationed in or coming into Illinois from time to time, must collect and remit the Use Tax....” Ill. Adm. Code Sec. 150.201 defines the term “retailer maintaining a place of business in this State” to include “any retailer having ...any agent or other representative operating within this State under the authority of the retailer ...,

irrespective of whether such ... agent or other representative is located here permanently or temporarily...."

Please confirm our understanding that merely participating and exhibiting at a trade show, without making sales or taking orders, would not render our client a "retailer maintaining a place of business in [Illinois]" within the meaning of these regulations.

Some states have explicitly stated that this limited participation in trade shows, with no sales taking place does not create sales tax nexus. Obviously, that position encourages participation in trade show activity in the state.

Please do not hesitate to contact us if you need further information. We look forward to your prompt response.

In the context of a General Information Letter, the Department is unable to make nexus determinations because the amount of information required to make that determination is often best gathered by an auditor. The following information outlines the principles of nexus. We hope it is helpful to you in determining whether you are responsible to pay tax in Illinois.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i), enclosed. This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801, enclosed. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The United States Supreme Court in Quill Corp. v. North Dakota, 112 S.Ct 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax laws. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Cause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. Quill at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller. The representative need not be a sales representative. Any type of physical presence in the State of Illinois, including the vendor's delivery and installation of his product on a repetitive basis,

May 16, 2000

will trigger Use Tax collection responsibilities. Please refer to Brown's Furniture, Inc. v. Zehnder, 171 Ill.2d 410 (1996).

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and remit the amount directly to the State. The Use Tax rate is 6.25%.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.